



Figure 1 - Map of System Service Area

The System is divided into nine separate sewer basins: Cahaba, Leeds, Village Creek, Five Mile Creek, Prudes Creek, Trussville, Valley Creek, Warrior, and Turkey Creek. A full map detailing the sewer basins is included in the Appendix to this report at A-1.

B. History of the System.

Over the past several years, much of what has been written about the System has focused on the criminal activity surrounding the financing and construction of the System improvements mandated by the 1996 Consent Decree. However, the difficulties currently facing the System are not solely the result of the construction and financing of those improvements, or any fraud surrounding that financing or construction, or even the 1996 Consent Decree itself. The beginnings of many of the core problems facing the System today can be traced back much further than 1996.

The System has a long history of financial and environmental problems that date back to its creation in the early 1900s. Many of these problems result from the longstanding and consistent failure of state and local elected officials to sufficiently fund the needs of the System. This pattern of consistent underfunding stems in part from legal, political, and structural barriers facing the System, many of which still exist today. Therefore, understanding the difficulties and challenges currently facing the System requires a clear understanding of its history.

In November 2001, the Public Affairs Research Council of Alabama published a report entitled “The History of the Jefferson County Sanitary Sewer System,” (the “PARCA Report”) that details, in a comprehensive and helpful manner, the history and development of the System from its creation in 1901. A copy of the PARCA Report is included in the Appendix to this report at A-2. The following sections of this report contain a brief summary of the history, highlighting those areas that provide important context to understanding the difficulties facing the System today.

1. Early Beginnings 1901-1910: Divided Responsibilities and Inadequate Hookup Enforcement Hinder the Effectiveness of the New Sewer System.

As early as the 1870s, Jefferson County began to experience health and environmental problems caused by a lack of adequate sanitation. A cholera epidemic in 1873 decimated the population of the newly-incorporated city of Birmingham, and repeated typhoid outbreaks earned Birmingham the reputation as one of the typhoid capitals of the world.⁹ Widespread recognition of the need for a county-wide sewer system in Jefferson County to address these health and environmental problems began as early as the late 1800s, when rapid industrial development in the Birmingham area led to the incorporation of dozens of municipalities, each with their own separate sewer collection system that simply deposited the raw sewage into the most convenient watercourse.¹⁰ Because the 1875 state constitution placed strict limitations on local taxing and

⁹ PARCA Report at 41.

¹⁰ *Id.* at 9.

funding authority, an act of the state legislature was required to authorize and fund construction of a county-wide sewer system in Jefferson County.¹¹

The necessary state legislation was passed in 1901. Act 714 designated all of Jefferson County as a sanitary sewer district and created a Sanitary Commission composed of eleven citizens appointed to oversee operation of the District.¹² A copy of Act 714 is included in the Appendix at A-3. The Sanitary Commission was given the duty “to protect from pollution any and all streams and water courses from which any municipality or community draws or uses in whole or in part its supply of water.”¹³

Although the new Sanitary Commission was given the duty of protecting all water supplies throughout the county, Act 714 did not give it the necessary authority to carry out that duty. Under Act 714, the Sanitary Commission had no powers over lateral branch sewer lines (i.e., the smaller diameter lines serving residents) located within the various municipalities in the County, and the Act did not authorize the Sanitary Commission to require residents to connect their residences to the sewer system. Instead, responsibility for the sewer system under Act 714 was divided: municipalities were responsible for construction of local branch lines, and importantly, for requiring residents to connect to those local lines, and the Sanitary Commission was responsible for construction of trunk lines (i.e., the larger diameter pipes that collect wastewater from the smaller local branch lines) and for construction and operation of the treatment plants.¹⁴ Under this divided responsibility structure, which continued until the 1996 Consent Decree, the County ran the treatment plants and trunk lines, but had no control over who tapped into those lines. Because municipalities were not responsible for treatment, they had little incentive to view wastewater sanitation as a major issue, which resulted in poor operation and maintenance of local collection systems and spotty enforcement of residential hookup requirements.¹⁵

Local and state officials quickly realized this divided responsibility between the County and the municipalities placed significant barriers to the establishment of an effective county-wide wastewater system. As early as 1907, state legislative records indicate widespread recognition that the System could never effectively address the County sanitation problems unless the County was given the authority to directly require residents to connect to the System.¹⁶ A 1912 report on the System blamed the divided responsibility between the County and municipalities as the cause of two then-pressing problems: (1) a lack of municipal enforcement of hookup requirements; and (2) municipalities’ failure to maintain and operate local collection systems in a manner sufficient to prevent infiltration of storm water into the sanitary sewer system.¹⁷

¹¹ *Id.* at 5-10.

¹² *Id.* at 11.

¹³ Ala. Act. No. 714 at § 14 (Feb. 28, 1901).

¹⁴ PARCA Report at 11.

¹⁵ *Id.* at 5. As late as 1906, the City of Birmingham still had not enacted a mandatory hookup requirement, even though Act 714 required the municipalities to enforce hookups and prohibit illegal discharges. *Id.* at 19. The problem of municipal failures to enforce hookup requirements was exacerbated in 1930, when the Alabama Supreme Court ruled in *City of Birmingham v. Greer*, 126 So. 859 (Ala. 1930), that the mandatory hookup requirement in Act 714 applied only to sanitary sewers, not to storm sewers. See also PARCA Report at 26.

¹⁶ PARCA Report at 19.

¹⁷ *Id.* at 23. Infiltration of storm water remains a problem with the System today, as discussed in more detail in Sections II.C.1 and III.B *infra*.

Throughout the history of the System, these two problems were repeatedly identified as fundamental and pressing problems preventing effective operation of the System.¹⁸

Despite this early and repeated recognition of the problem, the divided responsibility between the County and municipalities remained until the 1996 Consent Decree, which ordered the County to assume responsibility for municipal lines that had never been properly operated and maintained. During the Consent Decree litigation, the County estimated that 60% of the System's environmental problems arose from inadequate municipal sewer lines.¹⁹

By 1996, however, thousands of homes and business had been built in Jefferson County that were not connected to the sewer system. Moreover, although the 1996 Consent Decree gave the County full responsibility for the entire collection and treatment System, the Consent Decree did not give the County the necessary authority to enforce mandatory hookups to the System. As discussed in detail in Section VIII *infra*, to this day the County *still* lacks the clear authority to enforce mandatory hookups to the System, even though this authority is routine for sewer systems throughout the country, and in Alabama has been continually recognized for almost a century as absolutely vital to the effective operation and maintenance of the county-wide sewer system.²⁰

At the same time the legislature passed Act 714 in 1901 establishing the Sanitary Commission and dividing responsibility for the new System between the County and the municipalities, the legislature also passed Act 716 to provide funds for the construction and operation of the newly-created sewer system.²¹ A copy of Act 716 is included in the Appendix at A-4. Act 716 authorized the issuance of up to \$500,000 in bonds, and required the assessment and collection of a County-wide ad valorem tax²² to pay interest on the bonds, maintain the System, and protect County water supplies.²³

The County-wide tax, Act 714 and the bonds issued under Act 716 were all subsequently validated by the courts.²⁴ In validating the County-wide tax, the Alabama Supreme Court

¹⁸ For example, a 1946 report of the Jefferson County Legislative Advisory Committee known as Memorandum No. 10 concluded that the System was in a state of disrepair and grossly inadequate to serve the sanitation needs of the County. The report concluded that the divided responsibility between the County and the municipalities was partly to blame for the extremely poor condition of the System. PARCA Report at 32. A 1947 citizens' committee report on the system reached the same conclusion, and also pointed to the divided responsibility as the reason for System's problems. *Id.* at 38. Nothing significant was done to address this problem until fifty years later when the County was forced, through adoption of the 1996 Consent Decree, to address this problem. During the Consent Decree litigation in 1996, the County estimated that 60% of the System's environmental problems arose from inadequate municipal sewer lines. *Id.* at 72.

¹⁹ *Id.* at 72.

²⁰ The Alabama Supreme Court recognized the importance of the power to enforce a mandatory hookup requirement in operating an efficient sewer system in *Allman v. City of Mobile*, 50 So. 238, 240 (Ala. 1909), where the court noted that "surely no sewerage system could be regarded as efficient without the incident power in the municipal corporation to compel connections of property by its owners with the system." The need for enforcement of mandatory hookup requirement for residents within Jefferson County is discussed in more detail in Section VIII *infra*.

²¹ PARCA Report at 11-12.

²² An ad valorem tax refers to tax levied on the value of real or personal property.

²³ *Id.* at 11.

²⁴ See *Keene v. Jefferson County*, 33 So. 435 (Ala. 1903) (upholding validity of Act 714); *Birmingham Trust &*

rejected the claim that the sewer system would only benefit those connected to it, and ruled that the sewer system provided a public health benefit to *all of the citizens of Jefferson County*.²⁵ Construction of the System, which at that time consisted of two trunk lines and two treatment plants in the central Birmingham area, began in late 1902, and was largely complete by 1906.²⁶

The Sanitary Commission was dissolved by the state legislature in 1909, just eight years after its creation, even though the initial terms of its officers were not yet complete. Control and operation of the System was transferred to the Jefferson County Board of Revenue, then the governing legislative body of the County.²⁷

In what turned out to be a prescient statement of the local and state politics that would later interfere with and prevent adequate planning and funding of the System's needs, a consulting engineer opined in a 1912 report on the System that this premature dissolution of the Sanitary Commission was "unfortunate." This same engineer also noted that transferring responsibility for the new System to the County's legislative body passed the System into the hands of:

a body not constituted nor chosen as to have special knowledge or interest in such subjects [as the creation of an adequate sanitary system for the County].²⁸

The system was administered by the Board of Revenue until that body was replaced by the County Commission in 1931.²⁹

2. *The First Years of Operation 1901-1947: State Approved Project-Based Bond Issuances Provide Inadequate Funding to Keep Pace with Growth.*

Following the \$500,000 bond issuance authorized in 1901 by Act 716 to fund initial construction of the core wastewater system around Birmingham, the only funding available for System operating and maintenance expenses was the annual sewer ad valorem tax. There was no mechanism at that time to generate the additional funds needed for routine maintenance, improvements or extensions to the System. Instead, before authorizing any capital improvement project, the County would seek authority from the state legislature to issue bonds to fund the project. This "one project at a time" funding approach was time-consuming, cumbersome, and vulnerable to political influence. Despite these problems, the project-based funding approach

Savings Co. v. Jefferson County, 34 So. 398 (Ala. 1903) (upholding validity of bonds issued pursuant to Act 716).

²⁵ *Keene*, 33 So. at 438. The Alabama Supreme Court confirmed this principle in *Shell v. Jefferson County*, 454 So. 2d 1331, 1336 (Ala. 1984) ("[t]he entire County benefits from the sewer system.").

²⁶ PARCA Report at 16.

²⁷ *Id.* at 19-20.

²⁸ *Id.* at 20. The need for a professional board dedicated solely to the operation and maintenance of the System continues today, and is one of the reasons the Receiver supports the need for legislation establishing an independent public corporation ("IPC") to operate and maintain the System going forward. The need for an IPC is discussed in more detail in Section VIII *infra*.

²⁹ *Id.* at 26.